IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3726 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KOTADA SEVA SAHAKARI MANDALI LTD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3726 of 1997

MR DILIP B RANA for

MR MEHUL H RATHOD for Petitioner No. 1

MR SL VAISHYA for Respondent No. 1,2

MS DARSHANA PANDIT AGP for Respondent No. 1

MR HARIN P RAVAL for Respondent No. 2

Respondents No. 3-4 :: Served

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/02/2003

ORAL JUDGEMENT

The petitioner before this Court is a Cooperative Society operating in village Kotada, Taluka-Deesa, District-Banaskantha. The petitioner was granted registration under section 4 of the Gujarat Cooperative Societies Act, 1961 [hereinafter referred to as, "the Act"] on 16th August, 1996. The said registration granted in favour of the petitioner was challenged by the respondent no.2 before the Additional Registrar [Appeal] in Appeal No. 106 of 1996. It was the claim of the respondent no. 2 that its application for registration was prior in time and that the Taluka Development Officer had submitted its report in favour of the registration of the respondent no. 2-Society. Ignoring such report, the registration was granted to the petitioner-Society. The said appeal was partly allowed. The registration made in favour of the petitioner-Society was confirmed. However, a direction was issued to consider the application for registration of the respondent no. 2-Society. Feeling aggrieved, the respondent no. 2 preferred Revision Application before the State Government. The said Revision Application was allowed under Order dated 19th April, 1997. The concerned authority was directed to register the respondent no.2-Society as such and to cancel the registration granted in favour of the petitioner-Society. Feeling aggrieved, the petitioner-Society has preferred the present petition.

Pursuant to the impugned order dated 19th April, 1997, the respondent no. 3, under his order dated 6th May, 1997, cancelled the registration granted in favour of the petitioner-Society. The said order dated 6th May, 1997 too has been challenged in the present petition. Besides, pursuant to the impugned order dated 19th April, 1997, the respondent no. 2-Society has been granted registration on 6th May, 1997. The said registration has become final and has not been challenged further.

Pending this petition, this Court [Coram : D.G Karia, J.] had on 9th May, 1997 ordered, "stay as to operation of the impugned order." The said stay continued till 3rd May, 2001. On 3rd May, 2001, under order made on Civil Application No. 3295 of 2001, the said stay was vacated. The Court [Coram : Y.B Bhatt, J.] has observed that the application for registration made by the respondent no. 2 was prior in time. Pursuant to the registration granted on 6th May, 1997, the respondent no. 2 had applied for various licences required for the purpose of trading. It had applied for membership of the District Cooperative Bank and had also applied for

finance from the said Bank. Further, in view of the orders made on L.P.A No. 448 of 2001 preferred by the petitioner against the above referred order dated 3rd May, 2001, the registration given to the petitioner Society has continued on condition that the petitioner society shall not borrow money from the District Cooperative Bank or any other financial institution.

Mr. Rana has submitted that the petitioner-Society had not opposed the application for registration of the respondent no. 2-Society. Even today, the petitioner-Society is not averse to the registration granted to the respondent no. 2-Society. He has submitted that merely because the respondent no. 2 Society has been granted registration, there was no need to cancel the registration granted in favour of the petitioner Society. Both the Societies, though are operating in the same area for the same objects, had adequate membership and both could have functioned without causing unhealthy rivalry. He has, therefore, submitted that the impugned order in as much as it cancels the registration granted to the petitioner Society requires to be quashed and set-aside. Mr. Rana has also relied upon Section 20 of the Act and has submitted that neither of the conditions mentioned in section 20 exists which should enable the concerned authority to cancel the registration granted to the petitioner Society. Therefore also, cancellation of registration of the petitioner society is illegal and contrary to the provisions of the Statute.

Mr. Raval has contested the petition. He has strenuously urged that both - the petitioner and the respondent no. 2 - Societies were proposed for the same objects and were proposed to operate in the same area. Both the societies, therefore, could not have been granted registration which would generate rivalry between the societies and their members. He has supported the order made by the State Government and has submitted that the State has rightly ordered cancellation of the registration of the petitioner-Society. Besides, since the registration granted to the respondent no. 2-Society on 6th May, 1997, the respondent no. 2-Society has started functioning. It has obtained various licences, membership of the District Cooperative Bank and finance from the said Bank. The accounts of the respondent no. 2 Society are also regularly audited. He has, therefore, submitted that there is no reason why the said registration should be cancelled now. He has further pointed out that the revisional authority has rightly recorded that the respondent no. 2-Society ought to have

been granted registration in as much as the application for registration of the respondent no. 2 Society was prior in time. The Taluka Development Officer had considered the proposal made for registration of the petitioner-Society as well of by the respondent no. 2-Society and had recommended registration of the respondent no. 2 Society. Further, some of the members of the respondent no. 2 Society were also named as the members of the petitioner-Society. The petitioner Society had granted membership to more than one person of the same family which is contrary to the Statute. Thus, the registration granted to the petitioner Society has been cancelled for cogent and valid reasons. The impugned order does not warrant interference. Mr. Raval has also relied upon sections 4 & 6 of the Act.

Section 4 of the Act provides for registration of a Society which has its objects, inter alia, of promotion of economic interest or general welfare of its members. The proviso thereof provides that it shall not be registered, if in the opinion of the Registrar, it is economically unsound or its registration may have an adverse effect upon any other Society. Section 6 of the Act provides for conditions of registration. Sub-section (1) thereof provides, inter alia, that no society other than a federal society shall be registered unless it consists atleast 10 persons, each of such person shall be member of a different family and shall be qualified to be member under the Act who resides in the area of operation of the Society. Section 20 of the Act provides for cancellation of registration. The said section empowers the Registrar to make an order cancelling the registration of the Society, if any of the conditions mentioned therein exists. Section 153 of the Act provides for an appeal against the order made, inter alia, under section 4 of the Act. Section 155 of the Act confers revisional powers upon the State Government.

The respondent no. 2 Society was promoted by one Dalaji Punmaji Tarak. It is admitted that he had applied for registration prior in time. Pending the said application for registration, one Rupaji Luhaji had promoted and had applied for registration of the petitioner-Society under section 4 of the Act. Both the applications were examined by the Taluka Development Officer. The Taluka Development Officer had submitted his report and had recommended registration of the respondent no. 2 Society to the District Panchayat. The application made for registration of the petitioner Society was also examined by the Taluka Development Officer and recommendation for its registration also was

made to the District Panchayat. Both the said applications and recommendations made by the Taluka Development Officer were examined by the District Production, Cooperation & Irrigation Committee. The said Committee under Resolution No. 181 passed on 6th August, 1996 recommended registration of the petitioner Society, while rejected the application for registration of the respondent no. 2 Society. In appeal against the said Resolution No. 181 preferred by the said Dalaji Punmaji Tarak, the Additional Registrar [Appeal] recorded a finding that existence of both the Societies was feasible and directed that the application for registration of the respondent no. 2-Society also be granted. However, the State Government in revision application preferred by the said Dalaji Punjmaji Tarak found that the simultaneous existence of both the Societies was not feasible in as much as both the societies operate in the same area and had same objects. The Revisional Authority has also recorded the finding that some of the persons shown to be the members of the respondent no. 2-Society were also shown to be the members of the petitioner Society. Several members of the petitioner Society were members of the same family. Besides, some of the members of the petitioner-Society were the persons residing in neighbouring village namely Ghunsol. In above view of the matter, the Revisional Authority allowed the said Revision Application preferred by the said Dalaji Punmaji Tarak and ordered registration of the respondent no. 2-Society and cancellation of the registration of the petitioner Society.

Mr. Raval has relied upon the judgment of this Court in the matter of B.B Shroff & Anr. v. Sardar Bhilandwala Pardi People's Coop. Bank Limited [1981 GLR 805]. Mr. Raval has particularly relied upon the observation made in paragraph 5 of the judgment. In the said judgment, this Court has, while considering the challenge to the registration of the amendment to the bye-law of the society, observed that, "...It would appear, therefore, that only such society can be registered under the Act which is to function on co-operative principles and the registration of which, in the opinion of the Registrar, will not have an adverse effect upon any other society."

I am of the view that keeping in view the purpose of the Act, the registration of two Societies operating in the same area for the same object may not be feasible in small villages. Such a registration may cause rivalry which defeats the purport of the Act. As recorded hereinabove, the petitioner-Society has not challenged

the registration granted in favour of the petitioner no. 2-Society. The finding of facts recorded by the revisional authority are also in dispute. In my view, section 20 also cannot be pressed into service. Section 20 empowers the concerned authority to cancel the registration already granted, if any of the contingencies mentioned therein happens. This is not a case where the concerned authority has invoked power under section 20 of the Act. For the cancellation of the registration of the petitioner Society has been ordered in view of the challenge to the registration granted under section 4 of the Act.

As recorded hereinabove, pursuant to the interim orders made by this Court, the order cancelling the registration of the petitioner-Society has not been operated till the date. The petitioner Society is permitted to function without taking financial assistance either from the District Cooperative Bank or from any other financial institutions. Besides, as suggested by Mr. Rana, in view of passage of time, the existence of two societies in the same village for the similar objects may be feasible. In the circumstances, the interest of justice should be met if the State Government reconsiders its decision in respect of the registration of the petitioner-Society keeping in view the existing circumstances.

In the result, the petition is partly allowed. The order of the State Government dated 19th April, 1997 [Annexure-A to the petition] in so far as it directs cancellation of the registration granted to the petitioner Society is quashed and set-aside. The Revision Application is remanded to the State Government for reconsideration of the registration of the petitioner-Society. While considering the registration of the petitioner-Society, the State Government shall take into consideration, the existing circumstances, the number of members of the petitioner Society, etc. The petitioner-Society shall furnish all the relevant materials afresh and shall also suggest another name for its Society so as to avoid possible conflict of identity. Rule is made absolute to the aforesaid extent. The parties shall bear their own costs.

[Ms. R.M Doshit, J.]

Prakash*